

VOLUME NO. 37

OPINION NO. 91

LIVESTOCK DEALER ACT - The Livestock Dealer Act does not require the licensing of the National Farmers Organization as a dealer; LICENSES - The Livestock Dealer Act does not require the licensing of the National Farmers Organization as a dealer; REVISED CODES OF MONTANA, 1947 - Section 46-2901, et seq.

HELD: The provisions of the Livestock Dealer Act, section 46-2901, et seq, R.C.M. 1947, do not require the licensing of the National Farmers Organization as a livestock dealer in order for the National Farmers Organization to lawfully act in the sale of livestock owned by its members.

18 November 1977

Robert G. Barthelmess, Chairman
Board of Livestock
Helena, Montana 59601

Dear Sir:

You have requested my opinion on the following:

Do the provisions of the Livestock Dealer Act, section 46-2901 et seq., R.C.M. 1947, require the licensing of the National Farmers Organization (NFO) as a livestock dealer in order for the NFO to lawfully act in the sale of livestock owned by NFO members?

The NFO is a non-profit corporation which assists agricultural producers in receiving adequate returns on their commodities through collective bargaining. Insofar as this technique is used in Montana for the sale of livestock, the procedure commences when a rancher signs a membership agreement with the NFO. Briefly, this agreement allows the NFO to act as the member's exclusive agent in the marketing of his commodities for a period of three years. This agreement places duties on the NFO to actively locate marketing outlets purchasing the commodities at the best possible price, and provides for an organizational structure to handle the marketing.

Secondly, the livestock of a number of NFO members are blocked together through sales contracts between the NFO and the members. The contract requires the member to identify the number, kind, grade, weight and approximate delivery

date of the livestock to be sold. Ownership of the livestock does not pass to the NFO but remains with the member. The NFO is given the power to negotiate the price paid for the livestock and other terms of sale, subject to a ratifying vote of the members involved in the sale. The agreement gives the NFO injunctive powers against the member and the right to seek specific performance in the event of a breach.

The NFO then, with knowledge of the number and quality of the livestock, attempts to locate a buyer. When a purchaser is found, the livestock are collected, and shipped directly to the purchaser. To serve the convenience of the purchaser, he writes a single check to the NFO trust fund. After authorized deductions to the NFO, the net proceeds are disbursed to each member-producer.

The Montana Livestock Dealer Act, pursuant to section 49-2602(1), R.C.M. 1947, makes it unlawful for a person to carry on the business of a livestock dealer without a valid and effective license by the Department of Livestock. Therefore, the determinative issue is whether this activity renders the NFO a "livestock dealer," as defined by the Livestock Dealer Act.

Section 46-2901(3) and (4), R.C.M. 1947, defines "livestock dealer" as follows:

- (3) "Livestock dealer" means a person who buys livestock for his own account for purposes of resale or slaughter; or for the account of others; or for or on behalf of any dealer. The term does not include a farmer or rancher who buys or sells livestock in the ordinary course of his farming or ranching operation; and
- (4) "Meat packer" means livestock dealer in this chapter.

Consequently, four circumstances exist under which a person is considered a livestock dealer for purposes of the Livestock Dealer Act:

- 1) When he buys livestock for himself to be slaughtered or resold;
- 2) When he buys for the account of another;
- 3) When he buys for or on behalf of any dealer; and
- 4) When he is a meat packer.

It is apparent that the first essential act a person must undertake in order for the statute to be effective is to buy livestock. Except in the one sentence exempting farmers and ranchers who "buy and sell" in the ordinary course of their farm ranch operation, the terms "sell," "trade," or the like are not used. This suggests that the Legislature did not intend the Act to be triggered by the act of "selling." In construing a statute this office is bound to the same principles of statutory construction used by the courts. As often stated, the office of a court is to ascertain and declare what is in terms and in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Security Bank and Trust Co. v. Connors, Mont., 550 P.2d 1313, 33 St. Rptr. 501 (1976); State ex rel. Nard's TV v. District Court, 168 Mont. 456, 543 P.2d 1336 (1975).

Further evidence of the Legislature's intent to trigger the Livestock Dealer Act on the initial act of "buying," and not "selling," is found in the legislative history of the Act.

The Livestock Dealers' Licensing Act was passed by the 1971 Legislative Assembly to provide additional protection to livestock producers from unscrupulous or insolvent cattle buyers, by requiring all persons fitting the definition of "livestock dealer" to be bonded, maintain a sound financial condition, maintain records and permit state inspection thereof. To insure compliance with the requirements buyers must be licensed by the state, acting through the Department of Livestock. This legislation was requested by the then existing Livestock Commission, (now the Board of Livestock and the Brands-Enforcement Division of the Department of Livestock) with the support of the livestock industry. The bill, as introduced, was based upon draft legislation found in the 1970 Volume of the Council of State Governments' Suggested Legislation. This suggested draft was prepared by the U. S. Department of Agriculture at the urging of the National Association of State Department's of Agriculture, and was designed to supplement and complement the Packers and Stockyards Act of 1921, 7 USC 181, et seq.

Two differences between the suggested legislation and the bill as passed by our Legislature indicates legislative intent. First, the Council on State Government's suggested legislation was entitled "Livestock Market Agency and Dealer Licensing," and contained a definition of "livestock market agency" as follows:

The term "Livestock market agency" means any person who sells livestock for the accounts of others. (Emphasis added.)

Our act was entitled Livestock Dealer Licensing Act, section 9, chapter 414, Laws of 1971. Further, neither the term "livestock market agency" nor its definition is found in the law enacted by Montana. Second, amendments were made by our legislature to the definition of a "livestock dealer" as found in the Council of State Governments' proposal to (1) expand the definition to include a person buying livestock on behalf of a dealer, and (b) to exclude the farmer or rancher who buys or sells livestock in the ordinary course of his farming or ranching operation. The law has since been amended twice, however neither of the amendments were of any significance to the present issue.

Therefore, to come within the definition of a livestock dealer, the NFO must "buy" livestock within one of the circumstances outlined in section 46-2901(3), R.C.M. 1947. Unless the contrary is shown, words of a statute are presumed to be used in their ordinary and usual sense and with the meaning commonly attributed to them. In re Woodburn's Estate, 128 Mont. 145, 273 P.2d 391 (1954). Black's Law Dictionary, Revised Fourth Edition, defines "buy" as follows:

To acquire the ownership of property by giving an accepted price or consideration therefor; (Emphasis added.)

When engaging in the sale of livestock for its members, as previously described, the NFO does not buy livestock under any of the statutory circumstances, nor is it a meat packer. The NFO does not assume ownership of the members' livestock, but rather contracts to find a buyer at a favorable price. This is further evidenced by Art. X, section 1 of the Membership Agreement, which states:

The NFO shall not become legal owner or engage in business activities but must remain within the framework of a service organization bargaining for its members who have signed marketing contracts. (Emphasis added.)

Consequently, the NFO is not a livestock dealer within the contemplation of the Livestock Dealers Act.

THEREFORE, IT IS MY OPINION:

The provisions of the Livestock Dealer Act, section 46-2901, et seq., R.C.M. 1947, do not require the licensing of the National Farmers Organization as a livestock dealer in order for the National Farmers Organization to lawfully act in the sale of livestock owned by its members

Very truly yours,

MIKE GREELY
Attorney General